

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re GLORIA RAMOS-OCAMPO

on Habeas Corpus.

G049606

(Super. Ct. No. 13WF1004)

O P I N I O N

Original proceedings; petition for a writ of habeas corpus to file a late notice of appeal. Petition granted.

Appellate Defenders, Inc., Loleena Ansari for petitioner.

Kamala D. Harris, Attorney General, and Julie L. Garland, Assistant Attorney General, for Respondent.

*

*

*

THE COURT:*

Petitioner Gloria Ramos-Ocampo seeks relief from the failure to file a timely notice of appeal. The petition is granted.

In May 2013, petitioner was charged with carrying a loaded unregistered firearm in public, selling or transporting a controlled substance, possessing methamphetamine for sale, and possessing a controlled substance with a firearm. Petitioner was represented at trial by Deputy Public Defender Justin Glenn.

In July 2013, the jury found her guilty on all counts. In August 2013, she was ordered to serve 365 days in Orange County jail followed by three years of formal probation.

After petitioner was sentenced, Glenn advised her regarding her right to appeal. Petitioner requested that Glenn file a notice of appeal on her behalf. Glenn did not file a notice of appeal on her behalf because he mistakenly believed that petitioner wanted to think about whether she wanted to appeal, and he further mistakenly believed that if she did want to appeal, she would then contact him with her request. When petitioner wrote Glenn regarding her appeal, he realized that he had mistakenly misunderstood the nature of her initial request that he file an appeal on her behalf.

The Attorney General does not oppose petitioner's request for relief to file a late notice of appeal without the issuance of an order to show cause. (*People v. Romero* (1994) 8 Cal.4th 728.)

The principle of constructive filing of a notice of appeal should be applied in situations where a criminal defendant requests trial counsel to file a notice of appeal on his or her behalf, and counsel fails to do so in accordance with the law. (*In re Benoit* (1973) 10 Cal.3d 72, 87-88.) This is because a trial attorney who has been asked to file a notice of appeal on behalf of a client has a duty to file a proper notice of appeal, or tell

* Before Rylaarsdam, Acting P.J., Ikola, J., and Thompson, J.

the client how to file it herself. In this case, petitioner reasonably relied on counsel to file a proper notice of appeal in accordance with the law.

The petition for relief is granted. Appellate counsel is ordered to file a notice of appeal on petitioner's behalf within 30 days from the date of this opinion becoming final. The Clerk of the Superior Court is directed to file the notice of appeal if presented to the superior court within 30 days of the date of this opinion becoming final. Further proceedings, including the preparation of the record on appeal, are to be conducted according to the applicable rules of court. In the interest of justice, the opinion in this matter is deemed final as to this court forthwith.